IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 3892 OF 2007
IN
SUIT NO. 2886 OF 2007

Satish Vadilal Sheth & Anr. ... Plaintiffs.

V/s.

Shyam T. Sachanandani & Anr. ... Defendants.

Mr. Sanjay Jain i/b. M/s. Pravin Mehta & Mithi & Co.
for the Plaintiffs.
Mr. P.A. Sawant for the Defendants.

CORAM : DR. D.Y. CHANDRACHUD,J.

29TH NOVEMBER 2007.

P.C. :-

. This is a Notice of Motion taken out by the Plaintiffs for the appointment of a Receiver.

2. An agreement was entered into between the Plaintiffs and the Defendants on 30th April 2005 under which the Plaintiffs agreed to assign the benefit of a tenancy in respect of Flat No.101 situated on the first floor of a building on Plot No. 46 at J.V.P.D. Scheme, Vile Parle (West), Mumbai at and for a consideration of Rs.97.50 lakhs. The Defendant paid an

amount of Rs.60 lakhs and furnished a further cheque in the amount of Rs.15 lakhs against possession of the premises. The cheque came to be dishonoured on presentation on 16th August 2005. The Plaintiffs terminated the assignment by a letter dated 22nd August 2007. In reply, the Defendant stated on 3rd September 2007 that the tenancy of the disputed flat was perpetual and could not be terminated. The Defendant has admitted in paragraph 5 of the letter that a cheque of Rs.15 lakhs was dishonoured on his instructions The Defendant contended that the landlord had instituted proceedings for eviction and that, therefore he had instructed his bankers to stop payment.

3. The contention of the Plaintiffs is that together with the agreement that was arrived at between the parties on 30th April 22005, the Plaintiffs had furnished copies of relevant underlying documents to support their entitlement to assign the tenancy. The Defendant having accepted the premises under the agreement dated 30th April 2005, has failed to pay the balance of the consideration of Rs.37.50 lakhs. Counsel appearing on behalf of the Plaintiffs stated before the Court on instructions that the Plaintiffs

are ready and willing to refund the entire consideration of Rs.60 lakhs with interest at the rate of 15% per annum, against the handing back of possession of the premises. It has been urged that the Defendant cannot remain in possession without paying the balance of the agreed consideration for the assignment of the tenancy.

4. Counsel appearing on behalf of the Defendant submits that the Defendant is not ready and willing to either deposit the balance of the consideration of Rs.37 lakhs or to hand back possession to the Plaintiffs. The Defendant is not willing to accept the offer that the Plaintiff would refund the consideration with interest subject to the Defendant handing over possession.

5. The Defendant cannot lawfully contend that he would be entitled to continue in occupation of the premises without securing the Plaintiff for the balance of the consideration which was due and payable for the assignment of tenancy rights. The Defendant is neither willing to abide by what was agreed between the parties nor is he ready and willing to hand back possession

subject to the refund of his amount with interest.

6. In these circumstances, a fit case is made out for appointment of a Receiver.

7. The Notice of Motion has been taken up by consent for hearing at this stage. The Motion is made absolute in terms of prayer clause (a) with the modification that the Receiver shall, in the first instance appoint the Defendant as his agent subject to security and royalty. While determining the royalty and security, the Receiver shall have due regard to the fact that the Defendant has paid to the Plaintiff an amount of Rs.60 lakhs.

8. In the event that the Defendant declines to accept the agency of the Receiver, the Receiver shall then place a report before the Court for seeking further directions. The Court Receiver shall fix ad-hoc royalty within a period of four weeks and the final royalty and security within a period of three months from today. Until the Court Receiver takes charge, there shall be an order of injunction in terms of prayer clause (b).